**REPCO HOLDINGS BHD**

**v.**

**PUBLIC PROSECUTOR**

HIGH COURT MALAYA, KUALA LUMPUR
GOPAL SRI RAM JCA
[CRIMINAL REVISION NO: W-43-7-97]
2 OCTOBER 1997

***CONSTITUTIONAL LAW:*** *Public Prosecutor - Federal Constitution, art. 145(3) - Power to conduct criminal prosecutions - Scope and effect - Whether Attorney-General as Public Prosecutor vested with exclusive discretion over control and direction of all criminal prosecutions - Vesting of power to prosecute on any authority other than the Public Prosecutor - Whether unconstitutional - Criminal Procedure Code, ss. 376, 380 - Courts of Judicature Act 1964, s. 30(1)*

***CONSTITUTIONAL LAW:*** *Legislature - Act of Parliament - Constitutionality of - Provisions in Acts in direct conflict with the supreme law - Whether ultra vires and of no effect - Declaration of unconstitutionality of a written law - Whether to have retrospective effect - Federal Constitution, art. 145(3) - Securities Industries Act 1983, s. 126(2) - Securities Commission Act 1993, s. 39(2)*

***CRIMINAL PROCEDURE:*** *Prosecution - Public Prosecutor - Criminal Prosecutions - Power to institute criminal proceedings in court - Whether vested exclusively with the Public Prosecutor - Vesting of power to prosecute on any authority other than the Public Prosecutor - Whether ultra vires and of no effect - Criminal Procedure Code, ss. 376, 380 - Federal Constitution, art. 145(3) - Securities Industries Act 1983, s. 126(2) - Securities Commission Act 1993, s. 39(2)*

***WORDS & PHRASES:*** *"Conduct" - Federal Constitution, art. 145(3) - Scope and proper meaning of*

Repco Holdings Berhad ('Repco') in this case was charged with an alleged infringement of s. 86 of the Securities Industries Act 1983 ('the SIA'). Consequently, two officers from the Securities Commission, a body created by the Securities Commissions Act 1993 ('the SCA'), proceeded to prosecute the case against Repco. It was not in dispute that, in so prosecuting, the two officers were acting pursuant to s. 126(2) of the SIA and s. 39(2) of the SCA, which in effect vested the conduct of prosecutions under each enactment in the hands of persons other than the Public Prosecutor. This position

irrespective, at the hearing of the case on 25 August 1997, Repco took a preliminary objection questioning essentially the *locus standi* of the prosecuting officers. Repco argued that art. 145(3) of the Federal Constitution had vested in the Attorney-General the sole power to conduct criminal proceedings in Court, and that being so, both s. 126(2) of the SIA and s. 39(2) of the SCA were *ultra vires* the Federal Constitution and were therefore void. The Sessions Judge, faced with the constitutional argument, resorted to s. 30 of the Courts of Judicature Act 1964, and consequently transmitted the record in the case to the present Court to determine *inter alia* the constitutionality of the two sub-sections. Before the learned High Court Judge, question inevitably arose as to whether any other authority, other than the Attorney-General as Public Prosecutor, could lawfully be empowered to conduct criminal prosecutions, and hence, whether both s. 39(2) of the SCA and s. 126(2) of the SIA, could be read harmoniously with art. 145(3) of the Federal Constitution.

**Held:**

**[1]** Reading the plain language of art. 145(3) of the Federal Constitution, it is clear that the supreme law has committed to the hands of the Attorney-General the sole power, exercisable at his discretion, to institute, conduct and discontinue criminal proceedings. Sections 376 and 380 of the Criminal Procedure Code, likewise, make it clear that the only authority that is constitutionally entitled to conduct prosecutions is the Attorney-General as Public Prosecutor.

**[1a]** The expression 'conduct' in art. 145(3) of the Federal Constitution cannot but refer to the conduct of prosecutions in court. So also the expression 'control and direction' in s. 376(i) of the Criminal Procedure Code which must refer to all criminal prosecutions and proceedings. The word 'conduct' appearing in art. 145(3) and in sub-ss. 39(2) of the SCA and 126(2) of the SIA, however, carries the same meaning.

**[2]** Since the Federal Constitution exclusively authorises the Attorney-General to conduct prosecutions, it must follow that no other authority may be lawfully empowered to exercise that function. That being so, s. 39(2) of the SCA is unconstitutional, null and void and of no effect. The subsection wholly contravenes art. 145(3).

**[2a]** Sub-section (2) of s. 126 of the SIA, however, refers to the conducting of prosecution by the Registrar of Companies or by someone authorised by him in writing. Unlike the Chairman of the Securities Commission, who is not constitutionally authorised to conduct prosecution under the SIA, the Registrar of Companies is a senior member of the Judicial and Legal Service and is normally gazetted as a Deputy Public Prosecutor.

Thus, if the Registrar of Companies is a gazetted Deputy Public Prosecutor and in such capacity conducts the prosecution of an offence under the SIA, that would not be caught by art. 145(3). Section 126 of the SIA, in the event, is *ultra vires* art. 145(3) of the Federal Constitution save to this extent.

**[2b]** Section 380(i) of the Criminal Procedure Code does not provide any assistance to the Securities Commission either. The expression 'public officer' appearing in that section refers to members of the public. While, for the purpose of carrying out their duties, members of the Securities Commission are deemed to be public servants (s. 40 of the SCA), they do not fall within the scope of s. 380(i) of the Code.

**[3]** As a general rule, the declaration of invalidity of a written law on the grounds that it runs foul of the Federal Constitution has retrospective effect. The court, however, is fully authorised, having regard to public interest, to make a prospective declaration so as not to render invalid convictions entered and proceedings already concluded before the challenge is taken on the ground of unconstitutionality.

**[3a]** It will be a manifest injustice to render retrospective the ruling on the two impugned subsections. In the circumstances, the declaration as to their invalidity shall only be prospective, and shall only include this case and cases registered from today 2 October 1997.

*[Preliminary objection upheld; order accordingly.]*

**Cases referred to:**

*Public Prosecutor v. Datuk Hj Harun bin Hj Idris & Ors [1976] 2 MLJ 116* ***(refd)***
*Public Prosecutor v. Lim Shui Wang & Ors [1979] 1 MLJ 65* ***(refd)***
*Long bin Samat & Ors v. Public Prosecutor [1974] 2 MLJ 152* ***(foll)***
*Johnson Tan Hang Seng v. Public Prosecutor [1977] 2 MLJ 1966* ***(refd)***
*Raymond v. The Attorney-General [1982] 2 WLR 853* ***(cit)***
*Dewan Undangan Negeri Kelantan and Anor v. Nordin bin Salleh and Anor [1992] 2 SCR 453* ***(refd)***
*Mamat bin Daud & Ors v. Govt of Malaysia [1988] 2 CLJ 771* ***(refd)***
*Tan Tek Seng v. Pesuruhjaya Pendidikan Malaysia [1996] 2 CLJ 771* ***(refd)***
*Hong Leong Equipment Sdn Bhd v. Liew Fook Chuan [1997] 1 CLJ 665* ***(refd)***
*Public Prosecutor v. Dato' Yap Peng [1987] 1 CLJ 550* ***(foll)***

**Legislation referred to:**

Courts of Judicature Act 1964, s. 30(1)
Criminal Procedure Code, ss. 376, 380(i)
Federal Constitution, arts. 4(1), 145(3)
Securities Industry Act 1983, ss. 86, 91, 126(2)
Securities Commission Act 1993, s. 39(2)

**Other sources referred to:**
*The Attorney-General: Politics and the Public Interest,* Prof Edwards, p 91
*Law Officers of the Crown,* Prof Edwards

*For the applicant - Muhammad Shafee Abdullah (Ng Aik Guan with him); M/s Shafee & Co*
*For the respondent - Azahar Mohamed & Shamsul Sulaiman, DPP*

**JUDGMENT**

**Gopal Sri Ram JCA:**

This is an application under s. 30(1) of the Courts of Judicature Act 1964. That section reads as follows.

> 30(1) Where in any proceedings in any subordinate court any question arises as to the effect of any provision of the Constitution the presiding officer of the court may stay the proceedings and may transmit the record thereof to the High Court.
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> (2) Any record of proceedings transmitted to the High Court under this section shall be examined by a Judge of the Court and where the Judge considers that the decision of a question as to the effect of a provision of the Constitution is necessary for the determination of the proceedings he shall deal with the case in accordance with s. 48 as if it were a case before him in the original jurisdiction of the High Court in which the question had arisen.
>
> (3) Subsections (1) and (2) shall be deemed to be rules of court for the purposes of Article 128(2) of the Constitution.

The matter arose in the following way.

The applicant, Repco Holdings Bhd. ('Repco') is a public limited company. Its shares are freely traded in the Kuala Lumpur Stock Exchange. On 27 January 1996, Repco issued a statement to the Kuala Lumpur Stock Exchange. The statement contained certain facts which the Securities Commission considered to contravene s. 86 of the Securities Industry Act 1983 ('the SIA'). So it took steps to institute proceedings against Repco. On 21 October 1996 it applied for and obtained a summons from the Sessions Court in Kuala Lumpur against Repco. The charge annexed to the summons refers to Repco's statement I spoke of a moment ago and alleges an infringement of s. 86 of the SIA and punishable under s. 91 thereof.

The summons was returnable on 29 November 1996. Repco appeared before the Sessions Court on that day. The Sessions Court then fixed the case for hearing on 25 August 1997. On that date counsel who appeared for Repco

took a preliminary objection to the *locus standi* of the two officers who appeared to prosecute the case. These two officers were Ms Foo Lee Mei and Ms Seow Siew Mei. They were officers of the Securities Commission, a body created by the Securities Commission Act 1993 ('the SCA'). The prosecution of the case against Repco was in the hands of these two officers pursuant to the joint operation of s. 126(2) of the SIA and s. 39(2) of the SCA. For completeness, I will reproduce both these sections in full.

First, s. 126 of the SIA. It reads:

> 126(1) No prosecution for any offence under this Act shall be instituted except with the consent in writing of the Public Prosecutor.
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> (2) A prosecution for any offence against any provision of this Act may be conducted by the Registrar or by any officer authorised in writing by the Registrar or by any officer authorised in writing by the Chairman of the Commission.

Second, s. 39(2) of the SCA which reads:

> 39(1)No prosecution for any offence under this Act shall be instituted except with the consent in writing of the Public Prosecutor.
>
> (2) Any officer of the Commission authorised in writing by the Chairman may conduct any prosecution of any offence under this Act.

So far as sub-s. (1) of each of the foregoing sections are concerned, they make it clear that the institution of a prosecution under each enactment shall be only with the consent of the Public Prosecutor. The importance of this will appear later in this judgment. However, as may be noted, sub-s. (2) of each of the aforesaid sections vests the conduct of prosecutions under each enactment in the hands of persons other than the Public Prosecutor.

Accordingly, before the Sessions Court, counsel for Repco took the point that the two ladies I mentioned earlier had no *locus standi* to conduct the prosecution in this particular case. It was argued that both s. 126(2) of the SIA and s. 39(2) of the SCA were *ultra vires* art. 145(3) of the Federal Constitution and were void to that extent. The Sessions Judge, faced with the constitutional argument, acted under s. 30 of the Courts of Judicature Act 1964 and transmitted the record in the case to this court to determine the constitutionality of the two subsections I mentioned a moment ago. That is how I, sitting as a High Court Judge, have come to hear this application.

So much for the factual background.

In order to appreciate the arguments advanced in favour of the applicant before the Sessions Court, and repeated in substance before me this morning by its counsel Encik Muhammad Shafee Abdullah, it is necessary to hearken to the relevant provisions of the written law that govern the subject matter at hand. These are, art. 145(3) of the Federal Constitution, s. 376 of the Criminal Procedure Code and s. 380 of the same Code. They are as follows.

First, art. 145(3) of the Federal Constitution:

> 145(3) The Attorney-General shall have power, exercisable at his discretion, to institute, conduct or discontinue any proceedings for an offence, other than proceedings before a Syariah court, a native court or a court-martial.

Next s. 376 of the Criminal Procedure Code:

> 376 (i) The Attorney-General shall be the Public Prosecutor and shall have the control and direction of all criminal prosecutions and proceedings under this Code.
>
> (ii) The Solicitor-General shall have all powers of a Deputy Public Prosecutor and shall act as Public Prosecutor in case of the absence or inability to act of the Attorney-General.
>
> (iii) The Public Prosecutor may appoint fit and proper persons to be Deputy Public Prosecutors who shall be under the general control and direction of the Public Prosecutor and may exercise all or any of the rights and powers vested in or exercisable by the Public Prosecutor by or under this Code or any other written law except any rights or powers expressed to be exercisable by the Public Prosecutor personally.
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> (iv) The rights and powers vested in or exercisable by the Public Prosecutor by sub-s. (iii) and s. 68(ii) shall be exercisable by the Public Prosecutor personally.

Third, s. 380 of the Criminal Procedure Code:

> 380. Notwithstanding anything in this Chapter contained:
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> (i) any public officer may prosecute in any Court in any case or class of cases in which he is by any written law authorised to prosecute in such Court;
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> (ii) in summary non-seizable cases in the Court of a Magistrate:
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> (a) the Public Prosecutor or a Deputy Public Prosecutor or a Police Officer may appear and conduct any prosecution;

(b) any officer of any Government or of any local authority or statutory authority may appear and conduct any prosecution for an offence against any written law which it is the duty of the said department or authority specially to enforce;

(c) any private person may appear in person or by advocate or, in the State of Trengganu, by a pleader and prosecutor for an offence against his own person or property.

It will be seen at once, from a reading of the plain language of art. 145(3), that the supreme law, namely the Federal Constitution, has committed to the hands of the Attorney-General the sole power, exercisable at his discretion, to institute, conduct and discontinue criminal proceedings. The phrase "institute, conduct or discontinue" was considered by Abdoolcader J (as he then was) in *Public Prosecutor v. Datuk Hj Harun bin Hj Idris & Ors.* [1976] 2 MLJ 116. Of the expression "conduct". His Lordship said (at p. 119):

> 'Conduct' in art. 145(3) cannot but refer to the conduct of prosecutions in court, as it indeed appears *ipsissimis verbis* in s. 377 of the Code. And "control and direction" in s. 376(i) of the Code is in respect of all criminal prosecutions and proceedings, and not of criminal procedure or the jurisdiction of the courts.
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> 'Conduct' of criminal prosecutions and proceedings in art. 145(3) cannot connote the regulation of criminal procedure or of the jurisdiction of the courts or the power or discretion to do so. Any contrary contention would in effect in my view be tantamount to the suggestion of the Public Prosecutor arrogating to himself the legislative powers vested in Parliament under Item 4 and in particular para (b) thereof List I (Federal List) in the Ninth Schedule to the Constitution, with perhaps also the not inconceptible resultant intrusion or at least a more than peripheral incursion into the sphere of art. 121(1) of the Constitution which provides that the judicial power of the Federation is vested in two High Courts and in such inferior courts as may be provided by federal law namely, the Subordinate Courts Act 1948 which specifies the subordinate courts and their respective civil and criminal jurisdiction.
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> Pursuing its signification, 'to conduct' means 'to lead, guide, manage' (In *re Bhupalli Malliah* AIR [1959] AP 477*; Pride of Derby v. British Celanese Ltd.* [1953] 1 Ch. 149, at p. 167 per Lord Evershed, MR). It conveys the idea of leading and guiding, that is to say, the person who conducts the prosecution determines all important questions of policy involved in the courts of the trial and the attitude to be adopted by the prosecution towards material objections raised or demands made by the accused with respect to the evidence.

Abdoolcader J's interpretation of the phrase "institute, conduct or discontinue" was approved and applied by the Federal Court in *Public Prosecutor v. Lim Shui Wang & Ors.* [1979] 1 MLJ 65.

It follows from the foregoing discussion that the only authority that is constitutionally entitled to conduct prosecutions is the Attorney-General as Public Prosecutor. The adjectival vehicle contained in s. 376 and subsequent sections of the Criminal Procedure Code put this beyond doubt. The question then arises: is Parliament entitled by written law to vest the power to conduct criminal prosecutions in an authority other than the Attorney-General?

Encik Muhammad Shafee has argued that this question should receive a negative response. The Public Prosecutor upon whom lies a most onerous burden has considered the arguments and has come to the honest and inescapable conclusion that Encik Muhammad Shafee is correct in the contentions that he has advanced. Commendably therefore, the Public Prosecutor has instructed his Deputy who has appeared before me today to concede that the two subsections earlier referred to do indeed conflict with art. 145(3) of the Federal Constitution. However, this being an issue of public law, the agreement between counsel before me does not absolve this court of the duty to investigate the question of its own volition and decide whether the common ground upon which the parties before me stand is indeed maintainable in law. If I come to the conclusion that the impugned subsections are not *ultra vires* art. 145(3), I am at liberty to so declare, despite the agreement arrived at between counsel. However, having given the matter my most anxious consideration I have come to the conclusion that the Public Prosecutor is correct in the concession he has made.

Acting with utmost fairness, Encik Azahar bin Mohamed, Deputy Public Prosecutor, has cited to me cases which he says are useful in making my determination upon the issue at hand. I think I owe it to efforts of counsel to enter upon a discussion of the cases which he has cited.

The first is *Long bin Samat & Ors v. Public Prosecutor* [1974] 2 MLJ 152, 158 where Suffian LP said:

> In our view, this clause from the supreme law clearly gives the Attorney-General very wide discretion over the control and direction of all criminal prosecutions. Not only may he institute and conduct any proceedings for an offence, he may also discontinue criminal proceedings which he has instituted, and the courts cannot compel him to institute any criminal proceedings which he does not wish to institute or to go on with any criminal proceedings which he has decided to discontinue. (For the position in England, please see Viscount Dilhornes speech at pp. 32-3 in *Smedleys Ltd. v. Breed* [1974] 2 All ER 21). Still less then would the court have power to compel him to enhance a charge when he is content to go on with a charge of a less serious nature.

> Anyone who is dissatisfied with the Attorney-General's decision not to prosecute, or not to go on with a prosecution or his decision to prefer a charge for a less serious offence when there is evidence of a more serious offence which should be tried in a higher court, should seek his remedy elsewhere, but not in the courts.

The second authority which the learned Deputy has drawn to my attention is *Johnson Tan Hang Seng v. Public Prosecutor* [1977] 2 MLJ 66 where, at p. 70, Suffian LP once again said of art. 145(3):

> Before Merdeka Chapter XXXVII of the F.M.S. Criminal Procedure Code and the equivalent provisions of the S.S. Criminal Procedure Code set out his power. Today only the F.M.S. Code remains. Section 376(i) thereof provides generally that the Attorney-General in his capacity as Public Prosecutor shall have the control and direction of all criminal prosecutions and proceedings under the Code. The next nine sections particularise his powers.
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> For instance, under s. 381 he may enter a *nolle prosequi* after he has received the record of a preliminary enquiry. As noted by this court in *Long bin Samat v. Public Prosecutor* [1974] 2 MLJ 152 there was ample judicial authority before Merdeka to show that the Attorney-General enjoyed wide discretion in regard to criminal prosecutions. As s. 376(i) of the Criminal Procedure Code was already in existence before merdeka our constitution-makers could have been content with relying on it alone to preserve after *Merdeka* the Attorney-General's pre-*Merdeka* power, and if they had done so then it might be arguable that after merdeka it must be read subject to article 8: but our constitution-makers were not content to do so. They deliberately wrote art. 145(3) into our constitution which reads:
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> > The Attorney-General shall have power, exercisable at his discretion, to institute, conduct or discontinue any proceedings for an offence, other than proceedings before a native court or a court-martial.
>
> The language of this provision is very wide, for it includes the word 'discretion' which means liberty of deciding as one thinks fit. In view of the deliberate decision of our constitution-makers to write this provision into our constitution I do not think that it can be said that it must be read subject to art. 8.

The importance of the proposition formulated by the learned Lord President in these two cases is that, as a matter of public law, the exercise of discretion by the Attorney-General in the context of art. 145(3) is put beyond judicial review. In other words, the exercise by the Attorney-General of his discretion, in one way or another, under art. 145(3) cannot be questioned in the courts by way of *certiorari*, declaration or other judicial review proceedings.

I think that the proposition is not only good law but good policy. For, were it otherwise, upon each occasion that the Attorney-General decides not to institute or to conduct or discontinue a particular criminal proceeding, he will be called upon to account to a court of law the reasons for his decision. It will then be the court and not the Attorney-General who will be exercising the power under art. 145(3). That was surely not the intent on our founding fathers who framed our Constitution for us.

Encik Muhammad Shafee has drawn my attention to a passage in a leading work upon the subject. It is a text-book entitled *"The Attorney-General: Politics and the Public Interest"* by Professor Edwards whose other work, *"Law Officers of the Crown"* has been often quoted with approval by our courts. At p. 91 of the text Professor Edwards expresses the following view.

> The word 'conduct' it was stated, 'appears to be wider that the phrase 'carry on' and suggests to our minds that when the Director intervenes in a prosecution which has been privately instituted he may do so not exclusively for the purpose of pursuing it by carrying it on, but also with the object of aborting it; that is to say he may 'conduct' the proceedings in whatever manner may appear expedient in the public interest.'

The author was there quoting from the judgment of the English Court of Appeal in *Raymond v. The Attorney-General* [1982] 2 WLR 853.

In my judgment, having regard to the authorities read before me, the expression 'conduct' appearing in art. 145(3) and in the two impugned subsections carries the same meaning. Since the constitution exclusively authorises the Attorney-General to conduct prosecutions, it must follow, as night follows day, that no other authority may be lawfully empowered to exercise that function. Therefore, it is my opinion, that s. 126(2) of the SIA is *ultra vires* art. 145(3) of the Federal Constitution save to the extent I shall now indicate.

Subsection (2) of s. 126 of the SIA refers to the conducting of a prosecution by the Registrar of Companies or by someone authorised by such Registrar in writing. As a matter of practice, the Registrar of Companies is a senior member of the Judicial and Legal Service. He or she is normally gazetted as a Deputy Public Prosecutor. So, if the Registrar of Companies is a gazetted Deputy Public Prosecutor and in such capacity conducts the prosecution of an offence under the SIA that would not be caught by art. 145(3) of the constitution. But the Chairman of the Securities Commission is not placed on an equal footing. He is therefore not authorised lawfully, that is to say constitutionally, to authorise or to conduct prosecutions under the SIA.

Neither does s. 380(i) of the Criminal Procedure Code, relied on by the prosecutors before the Sessions Court provide any assistance to the Securities Commission. As pointed out by the learned Deputy, the expression "public officer" appearing in that section refers to members of the public service. While, for the purpose of carrying out their duties, members and servants of the Securities Commission are deemed to be public servants (s. 40 of the SCA), they do not fall within the scope of s. 380(i) of the Code.

Encik Muhammad Shafee has very properly drawn my attention to s. 126(2) as it originally appeared before the amendment. I think it useful to reproduce the section as it originally stood.

> 126(2) Without prejudice to the provision of s. 379 of the Criminal Procedure Code, an advocate and solicitor may, with the previous permission in writing of the Public Prosecutor, be employed by the Government to conduct any criminal prosecution, or to appear in any criminal appeal, on behalf of the Government; such advocate and solicitor shall be paid by the Government such remuneration as may be agreed between the Government and the advocate and solicitor, and while so employed he shall be deemed to be a public servant within the meaning of the Penal Code.

Section 126(2) as originally cast did not, in my judgement, contravene art. 145(3), because of the careful way in which it was drafted. On the other hand, s. 126(2) as presently worded cannot be read harmoniously with art. 145(3) to the extent I have earlier indicated.

Turning now to s. 39(2) of the SCA, it is my judgment that this subsection wholly contravenes art. 145(3). By reason of art. 4(1) of the Federal Constitution, it being a law which is inconsistent with the Constitution, the subsection gives way. I would declare it void and unconstitutional.

In arriving at my decision, I have not overlooked the important principles that govern the interpretation of written constitutions. Our Federal Constitution is a living document written for all time. Its language compresses within it ideas that are manifold and concepts that are multifaceted. The task of the judicial interpreter of such a document is not to place it in a coffin and nail the lid but to breathe life into it and to give effect to the full breadth of its great language. That is the spirit in which our courts have approached our Constitution on previous occasions. In this context I need only mention the decisions of our Supreme Court in *Dewan Undangan Negeri Kelantan and Another v. Nordin bin Salleh and Another* [1992] 2 SCR 453; *Mamat bin Daud*

*& Ors. v. Government of Malaysia* [1988] 1 MLJ 119; and that of the Court of Appeal in *Tan Teck Seng v. Pesuruhjaya Pendidikan Malaysia* [1996] 2 CLJ 771, and *Hong Leong Equipment Sdn Bhd v. Liew Fook Chuan* [1997] 1 CLJ 665.

There is, no doubt a presumption; even a strong presumption; that an Act of Parliament is constitutional. It would require much conviction to strike down a solemn act of legislation by a democratically elected Parliament. Nevertheless, once it has been amply demonstrated, as has been done in the present case, that an Act of Parliament contains provisions that are in direct conflict with the supreme law, it is the duty of this court to say so clearly and unequivocally.

For the reasons I have given thus far, I would declare s. 126(2) of the SIA to be unconstitutional, null and void and of no effect, save to the extent earlier indicated. In the same way I would declare s. 39(2) of the SCA to be unconstitutional, null and void and of no effect.

At the conclusion of arguments the learned Deputy drew my attention to the fact that there has been already some prosecutions pursuant to s. 126(2) of the SIA and s. 39(2) of the SCA. There are also part heard cases presently pending before the subordinate courts, some of which may be well advanced or nearing conclusion.

Now, as a general rule, the declaration of invalidity of a written law on the grounds that it runs foul of the Federal Constitution has retrospective effect. But, the court is fully authorised, having regard to public interest, to make a prospective declaration so as not to render invalid convictions entered and proceedings already concluded before the challenge is taken on the ground of unconstitutionality.

In my judgment, it will be a manifest injustice to render a retrospective ruling on the invalidity of the two impugned subsections. The declaration as to invalidity I now make shall therefore be prospective only and shall include only this case and cases registered from today. In doing so I act on the authority of the Supreme Court in *Public Prosecutor v. Dato' Yap Peng* [1987] 1 CLJ 550 and *Mamat bin Daud v. Government of Malaysia (supra)*. Accordingly, the ruling that I have just pronounced shall take effect from 2 October 1997.

*Reported by WA Sharif*